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No. 730

Supreme Court of the United States

OCTOBER TERM, 1946

L. W. REIGEL,

Petitioner,

v.

GEORGE M. HARRISON, individually and as Grand President of the Grand Lodge of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, an unincorporated organization, etc., et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Petitioner (referred to as Reigel) seeks to review the judgment entered September 23, 1946 (R. 188), denying petition for a rehearing of the decision and judgment of August 12, 1946 (R. 151, 152-164), in affirmance of a judgment (R. 106) of the District Court, Southern District of Ohio, dismissing Reigel's Amended and Supplemental Complaint (R. 89) against Respondents here, as defendants, for injunction, damages and all proper relief.

The opinion of the Court of Appeals (R. 152) is reported in 157 F. (2d) 140. The trial court opinion was oral (R. 103-104) and is not reported.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

A summary and short statement of the matter involved is: Reigel, a Vice Grand President of the Grand Lodge of the Brotherhood of Railway, etc., Employees (referred to as the Brotherhood or "the Organization"), in 1943 had for a third time been elected as such at a convention, for a term expiring June 30, 1947 (R. 16 bot.). The constitution of the Grand Lodge is included in the printed pamphlet, Plaintiff's Exhibit 1, transmitted, as were all exhibits, in original form, to the upper Court by order of the trial court (R. 107). (Additional copies of this exhibit are submitted for convenient reference.) Article 10, Section 1 (Plf.'s Exh. 1, p. 22) headed, "ELECTION—GRAND LODGE OFFICERS," reads:

> "Each shall serve until the election and installation of their successors, unless relieved of their offices by due process."

Reigel contended he was deprived of his office without the "due process" thus vouchsafed to a Grand Lodge officer.

In February and March, 1945, Harrison, as Grand President, took away from Reigel substantially all of his duties as a Vice Grand President (R. 18-19, 23-24).

In May, 1945, Reigel made accusations against Harrison before various general chairmen in meeting (R. 25 bot.). In the District Court, Reigel offered, but was not permitted, to show he had filed written charges against the Grand President and Grand Secretary-Treasurer in July, 1945 (R. 24), and these had not been acted on. There is no doubt he did file such charges (R. 25 bot.-26) and that Respondents and the Trustees refused to act as the constitution required they should (R. 38) on such charges.

On August 15, 1945, Harrison, purporting to act under Article 13, Section 11(a) of the constitution (Plf.'s Exh. 1, p. 28), suspended Reigel from membership (R. 159). Included in the grounds for suspension were (R. 76) that Reigel had made intemperate attacks upon and untrue accusations against the Grand President before the meeting above mentioned and that he had sought, by abuse of the Grand President, the Grand Secretary-Treasurer and the Trustees, and by threats of personal violence against the first two, to prevent investigations and exposures of his supposed misconduct (R. 159). The Grand President, the Grand Secretary-Treasurer and the Grand Executive Council treated Reigel's suspension from membership in the "Organization" as a forfeiture of his office as a Grand Lodge Vice President (R. 25, 37, 53). Between conventions, all executive and judicial power of the Grand Lodge (with immaterial exceptions) is vested in that Council [Plf.'s Exh. 1; Const. Art. 16, Sec. 2(a), p. 41].

As permitted by the constitution for a "member of the Organization," Reigel appealed from his suspension as such to the Grand Executive Council (Am. & Supp. Cplt., par. 10, R. 93; Plf.'s Exh. 1; Const. Art. 16, Sec. 6, p. 42). The sole ground of his appeal was (R. 31 top, 159 bot.) that before he could be separated from his office, the due process guaranteed to officers required procedure specified in the constitution, Article 19 (Plf.'s Exh. 1, p. 47), i. e., written charges (Sec. 1), a Board of Advocates (Sec. 2, p. 48), trial by them (Sec. 4, p. 49), their decision and, if guilty, punishment

> "either reprimand, suspension from office or expulsion from the Brotherhood" (Sec. 7, p. 50),

followed with the better appeal as in Sections 8 and 9 of Article 19 (pp. 50-51) to the convention from their decision, than in appeals from the Council (Art. 16, Sec. 15, p. 44; Art. 8, Sec. 3, p. 19).

The manner in which Reigel's appeal was heard by the Council was in violation of the constitution and grossly unfair, as shown in paragraphs 11 and 12 of the Amended and Supplemental Complaint (R. 93-96) and the proof [R. 57, Plf.'s Exh. 3 (transmitted), pp. 98, 112, 114, 115, 116, 142, 310, 328, 340-344, 347-8, 375-90, 390-98, 399, 400 bot.-405, 406], and was of itself a deprival of due process.

On October 13, 1945, the Council notified Reigel they had sustained the action of the Grand President. Reigel, on October 31 (R. 1), filed his complaint in the District Court and moved for restraining order or preliminary injunction with affidavit in support (R. 6-8). Some evidence was heard December 4, 1945 (R. 16). As objections were made to jurisdiction, Reigel, on December 27, 1945 (R. 15), moved to file a tendered amended and supplemental complaint

> "to conform the pleadings to the evidence, to indicate more clearly that the suit is a class action, to designate the personal and official defendants more accurately, to dismiss the defendant, Brotherhood . . . , an unincorporated organization, in order to avoid any question of want of jurisdiction and to plead matters which have occurred since the filing of the original suit."

On February 19, 1946, the Court allowed the filing, and dismissal of the Brotherhood as a defendant (R. 88). This pleading (par. 14, R. 96) avers that appeal to the next Grand Convention to be held in May, 1947, had to be filed within sixty days of October 13, 1945, and since no determination of the case or restoration to office before December 13 could have been obtained, Reigel had on December 4 filed such appeal without prejudice to his rights in the litigation and that

"said appeal was not necessary inasmuch as the proceedings to forfeit his office are illegal and void, and that said appeal will not, in any event, afford him an adequate remedy.

"Moreover, on an appeal from the Grand Council to a Convention, plaintiff having been suspended, would be denied the privileges of the floor and would have but a limited imperfect hearing at such Convention, not including the constitutional provisions for his benefit in a hearing at a Convention from an appeal from the Board of Advocates" (R. 96-97).

The Court, on February 19, 1946, decided against Reigel, thus (R. 104):

"I want prevailing counsel to prepare a finding of fact and conclusion of law, and the case will be dismissed on the one ground that Reigel, having chosen the Convention to settle the dispute, has relieved this Court of further responsibility. That's the finding. . . .

"Mr. Seasongood: I call the Court's attention to the fact that he didn't do that until we asked for a preliminary injunction and it was postponed at the instance of the defendants until he had to do that within a certain time, and he took his appeal without prejudice to his rights.

"The Court: That's very true. But while the case was pending here, he could have stood pat and put the issue squarely up to this Court. He didn't do that; he chose to take his chances on the Convention. The finding is, that it is binding on him and relieves this Court of further responsibility in determining the issues existing between the parties."

The Court made findings of fact and conclusions of law (R. 107, *et seq.*) not justified by the opinion or the evidence and entered, over Reigel's objection and exception (R. 122, 106), a general judgment of dismissal. Reigel's statement of points on which he intended to rely (R. 120) and his brief and argument (R. 187) include claim of error

in these respects. In the petition to the Court of Appeals for rehearing, under *Fourth* (R. 182), is shown the trial court based the finding the Convention could give Reigel full relief, solely on the constitution, a reading of which shows the opposite; since any relief will be postponed until the very end of his term and since by Article 8, Sec. 3, p. 19, Reigel's appeal will be heard by a Committee appointed by the President, subject to Convention approval, and the committee's report to the Convention will merely

> "set forth the salient points of the case and recommend the action to be taken" (*id.* p. 20 top).

Reigel contended that for the President to appoint a committee to determine, with practical finality, *inter alia* whether charges against and verbal attacks on himself justified punitive action by him, is a deprival of due process.

The appellate opinion (R. 156 bot., *et seq.*) adds, what it terms,

> "a bit more detail of the factual background disclosed by the record,"

and apparently assumes Reigel to have been guilty of misconduct. But when the trial court decided against Reigel on the sole ground of his appeal, as above stated, to the Convention pending the litigation, this occurred (R. 105):

> "Mr. Seasongood: I suppose, Your Honor, that the truth or falsity of the accusations against Reigel is not involved in this case. Will that be included in the finding?
>
> "The Court: That's right. The case simply turns on the selection by the plaintiff here of his own tribunal."

being the last of similar observations and rulings throughout the trial, e. g., R. 21, 26, 28 bot., 47 bot., 48 bot. Rei-

gel's position consistently was and is that when, under Article 19, there should be set up a Board of Advocates, Reigel would show that Board the falsity of the accusations (R. 161) and the malice that actuated them.

The appellate decision is that even if Harrison et al. declined to give Reigel the kind of tribunal, rights and remedies guaranteed him in the constitution as a Grand Lodge officer, he still had to exhaust remedies as a member of the Organization, no matter how futile, before coming to Court. Thus the decision says (R. 162):

> "Whether those who made the charges against him chose the appropriate course, we need not decide."

And (R. *id.*):

> "Reigel has not exhausted his remedies within the Brotherhood; and, this being true, he is not entitled to maintain this court action."

That part of the "factual background disclosed . . ." which shows the deceptive treatment by the Trustees of Reigel and their refusal, as well as that of the Council, to act on his charges against Harrison or even to give Reigel a transcript of the disallowance of his appeal to the Council from refusal to act on such charges, is not recounted by the Court.

The questions presented are:

1. May a Grand Lodge President, by use of power to suspend a member of the "Organization," forfeit the elective office of a Grand Lodge Vice Grand President?

2. Does the ordinary requirement of exhaustion of inter-association remedies before suit justify refusal of Court relief under circumstances including that plaintiff was denied by defendants remedies to which he was, under the constitution, entitled?

3. If so, should not refusal of injunction as premature have been the only penalty; not general dismissal and refusal of right to proceed in the same suit for damages against defendants as officers and personally for wrongful interference with plaintiff's enjoyment of his office?

4. Is there no exception to the rule of required exhaustion of inter-association remedies before suit?

5. Where complainant is entitled, before having his elective office forfeited, to "due process," by procedure expressly prescribed in the constitution, i. e., charges, opportunity to be heard by an impartial Board and right of appeal from its decision to a Convention under procedure that permits chance of success, and where he is refused such or any "due process," and where the procedures employed, besides violating fair play and due process, are also not conducted as prescribed for them in the constitution, even assuming them applicable—under such circumstances must an officer, before maintaining suit, exhaust the inter-association partial remedy, as a member, no matter how remote, incomplete, illusory, inferior and lacking in elements of due process?

6. Is it "due process" for an elective Grand Lodge President to forfeit about half the term of another Grand Lodge officer through suspension from membership, there being neither express nor implied power in the President to suspend an officer (power to suspend officers being expressly conferred upon an independent Board of Advocates) and where there is, in the constitution, no provision that suspension from membership in the "Organization" works forfeiture of Grand Lodge office?

7. May the jurisdiction of a Court to grant injunctive relief against forfeiture of balance of term of an officer be ousted by his agreement in an association constitution not to go to Court before exhaustion of inter-association

remedies, such remedies unexhausted being a limited and abortive appeal, in another capacity, to a Convention not to be held for years, until the very end of the term sought to be protected and too late for effective relief; so that a case then brought would have become moot, as to relief, to protect and save the term or possible additional term of the office?

8. Does one, deprived of elective office in the Grand Lodge of an unincorporated association through claimed forfeiture resulting from suspension from membership, without due process and in violation of the constitution and of procedure therein prescribed, who has brought suit to enjoin interference with enjoyment and property rights of his office and for damages against the officers as such and as individuals who deprived him of his office—does such one by taking a member's appeal, but only after applying for and failing to obtain injunction before expiration of prescribed time for appeal, to a Convention to be held more than a year thereafter, expressly without prejudice to his rights in the pending suit and asserting and showing that such forfeiture of his office was void and such appeal cannot afford adequate relief, lose the right further to prosecute his suit; and, if so, should same be dismissed *in toto*?

9. Is it "due process" for a Grand President to forfeit, through suspension from membership, the term of an elective officer for alleged causes which include claimed untrue and unwarranted attacks and charges against the President by the officer, the President then participating most actively, abusively and illegally in the hearing of the appeal from suspension before Vice Grand Presidents whom the President could discipline as he disciplined the officer proceeded against; and, in final appeal, the President appointing a Committee on Appeals to report to the Conven-

tion the "salient facts of the case" and recommendations; in other words, as to this last, is it "due process" that the President appoint a Committee to determine with substantial finality whether attacks on himself and his own proceedings were justifiable?

10. Is guilt or innocence a proper subject of inquiry when determining whether one has been deprived of due process?

11. Should the findings of a trial court be accepted if uncalled for by the opinion and if based on a constitution or written instruments contradicting the findings?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

This Court, we know, does not grant the writ merely because there has apparently been a wrong decision, no matter how grievous to the litigant; but, there must be special and important reasons as well for allowing review. Such, we submit, exist here:

First. While neither a federal nor state agency has deprived Reigel of "due process," the procedures employed to forfeit his office are so oppressive and patently violative of the Brotherhood constitution and of reasonableness, fair play and "due process," the result reached should not be countenanced.

Second. The decision is of great importance to all Grand Lodge officers and to all members, comprising over 250,000, of the Brotherhood. It establishes a principle very injurious to them and to all similar unincorporated associations, including labor unions, fraternal and religious associations. It lends itself to autocratic and arbitrary domination. It takes away the security of elective governing officials; since what was done successfully, without complying with the constitution, to Reigel could be done

similarly to any other Grand Lodge officer incurring the President's displeasure.

Third. It should be established by this Court that right to resort to courts to protect the term of an elective office may not be destroyed by association constitutions requiring precedent exhaustion of inter-association remedies where such remedies are unlawfully withheld and denied; and where those afforded are, in a different capacity, illusory, violative of due process, of the constitutional requirements and necessarily so long deferred as to prevent effective court relief.

Fourth. The decision is probably untenable and either in conflict with state law as declared by the Ohio Supreme Court or probably in conflict with Ohio law as yet unannounced by the highest court of that state.

Fifth. The decision is in conflict with applicable decisions of this Court.

Sixth. The decision is in conflict with decisions of other courts of appeals and with general law on the same matter.

BRIEF

As to the Fourth reason relied on, no Ohio decided case is, like the present, one where (R. 177) the procedure was "'contrary to and in violation of the constitution and statutes of the order, or was 'unwarranted, illegal or arbitrary.'" Moreover, *Baltimore & Ohio Railroad Co.* v. *Stankard,* 56 O. S. 224, held invalid a regulation prohibiting a resort to the courts. The present case rules that no court action may be had to save what remains of a term of office until appeal to a Convention to be held just before the end of the term has been acted on, i. e., until the case has become moot by inability to enjoin interference with enjoyment of the office or to order reference to a Board of Advocates or reinstatement in time to permit

the officer to stand for another term; and this, though the right to an independent board to which he was entitled under the constitution and a fairer appeal from its decision to the Convention have been denied.

Nor did the Court consider that the appeal taken was wholly illusory and a violation of due process, for, among other reasons, the fact that the President who suspended, partly for attacks on himself, appoints, subject to Convention approval, the hearing Committee on Appeals. The law in *Tumey* v. *Ohio*, 273 U. S. 510, repeats the ancient maxim, "No man can be judge in his own cause," Broom's Legal Maxims, Tenth Edition, p. 68. In *State ex rel. Fritter* v. *Fraternal Mystic Circle et al.*, 9 O. C. C. 364, the Court applies the rule of strict construction against the power of expulsion and forfeiture (p. 374) and at p. 375 says:

> "To permit the officers themselves, whose conduct was assailed, to try and expel members on such charges, would, at least in the absence of clearest authority and full showing of right, violate the plainest principles of justice.
> "...
> "The law requires a fair trial, upon sufficient charges, after notice and full opportunity to defend, and before an impartial and unbiased tribunal."

(While this case was reversed in 61 O. S. 628 for failure to have pursued the proper remedy, the above statement of legal principles cannot be questioned.)

Nor did the Court think it important that the hearing before the Council was conducted in flagrant defiance of constitutional requirements as shown in paragraph 12 (a), (b), (c) and (d) of the amended and supplemental complaint (R. 94) and proved. The following is an example (Plf.'s Exh. 3, p. 378) of Harrison's unlawful participation in the hearing:

> " 'Now what the hell are you talking about—persecution. If I want to persecute you I could go after you and there wouldn't be any doubt about it when I did. . . .'
>
> "Now he says I threatened to frame him because I called his attention to his shortcomings and I say it's a damn lie fabricated in his persecuted mind for the purpose of escaping his own perfidity and neglect of his clear and reasonable obligations and duties to this Organization."

Harrison, in complete charge of the appeal hearing, after such abuse and putting in all kinds of evidence by himself and others against Reigel, says (Exh. 3, p. 402 top):

> "This Executive Council doesn't try charges, they simply hear appeals and what is the issue here. . . ."

and at p. 405 objected successfully to Reigel cross-examining witnesses. In *The Peoples Bank & Savings Co.* v. *Katz et al.*, 146 O. S. 297, 300 (1946), the very course pursued by Harrison and the Council, under his domination, was ground of reversal for refusal to permit cross-examination. We repeat, there is no Ohio decision that a person, denied guaranteed constitutional safeguards, must follow to the end other inferior procedure to which he is wrongfully relegated before he may maintain a suit.

The rule of required exhaustion before suit of inter-association remedies is based on contract. As in all contracts, when A makes it impossible for B to do what would otherwise be required of him under the contract, B is excused from doing it. Broom's Legal Maxims, Tenth Edition, p. 165. How could Reigel exhaust inter-organization remedies before bringing suit when he was not permitted to have them? The Ohio cases in the Court's opinion are, then, we submit, inapplicable to the facts here, as shown in the petition for rehearing (R. 175, et seq.), to which we respectfully refer. Hence, the decision below was "probably untenable" and, therefore, probably in conflict with

state law as yet unannounced by the highest court of the state. *Ruhlin* v. *New York Life Ins. Co.*, 304 U. S. 202, 206.

As to the Fifth reason relied on, the decision is in conflict with such applicable decisions of this Court as *Tumey* v. *Ohio, supra; Hill* v. *Texas,* 316 U. S. 400, 406 (in judicial consideration whether constitutional rights such as due process have been denied, the individual's guilt or innocence is not a subject of inquiry; but the lengthy, one-sided recital of "factual background" (R. 156 bot.), in the opinion below, indicates a different view, since it would not have been included if thought immaterial); *Gonzalez* v. *Archbishop,* 280 U. S. 1, 16, 17 (in which the Court said decisions of church tribunals would not be accepted where there was "arbitrariness." To deprive a person of constitutional rights is certainly "arbitrariness").

The Court erroneously (R. 164) thought decisions of this Court, such as *Myers* v. *Bethlehem Corp.,* 303 U. S. 41, 50, analogous. As before shown, however, the rule of required exhaustion of inter-association remedies is based on contract; not, like the *Myers* and other cases, compelled by Congressional enactment.

As to the Sixth ground relied on, the present decision is in conflict, on the same matter, with *Green* v. *Obergfell,* 121 F. (2d) 46, 55, decided by the Court of Appeals for the District of Columbia. That decision holds there is to be no judicial interference with intra-association affairs or determinations

> "in the absence of special circumstances showing injustice or illegal action,"

adding:

> "Among other reasons which are said to warrant judicial interference are violation of contract obligations,[28] and invasion of property rights." [29]

with citations in notes 28 and 29 to sustain this statement. Both reasons exist in Reigel's case.

The present decision accepts the findings of the District Court as supported by substantial evidence and not clearly erroneous (R. 156 bot.). However, the findings do not comport with the sole basis of the Court's decision on which the case was dismissed, namely, Reigel's appeal as a member to the Convention during the pendency of the litigation (R. 104). The supposed adequacy of Reigel's remedies is based only on the constitution itself and is clearly disproved by it. Where findings are based on written instruments, the appellate court is as able as the trial court to draw the proper deductions therefrom. Other courts of appeals have not accepted the trial court's findings in such cases. *Bowles, Admr. O.P.A.* v. *Beatrice Creamery Co.*, 146 F. (2d) 774, 780, 10 Cir.; *United States* v. *Latter-Day Saints et al.*, 101 F. (2d) 156, 10 Cir.; *Societe Suisse Pour Valeurs De Metaux* v. *Cummings, Atty. Gen.*, 99 F. (2d) 387, App. Dist. of Col.; *Erskine* v. *United States*, 84 F. (2d) 880, 9 Cir.

The decision, in sustaining a dismissal rather than ordering a stay, conflicts with decisions of this Court, such as *Order of Railway Conductors of America* v. *Pitney*, 326 U. S. 561.

The decision, in sustaining a general judgment of dismissal rather than a dismissal without prejudice as premature, is in conflict with *Radick et al.* v. *Underwriters at Lloyd's, London*, 137 F. (2d) 21, 7 Cir. Such a dismissal is not justifiable, in any event, and may, as shown in the petition for rehearing (R. 165-170), have serious consequences to Reigel in further attempts to obtain court relief.

The decision is in conflict, in the same matter, with general law and the opinions of competent legal authorities such as *Burn* v. *National Amal. Labor Union, etc.* (1920),

2 Chancery 364; *Oakes, Organized Labor and Industrial Conflicts,* 1927, p. 36, Section 28; 4 *Am. Jur.,* Sec. 19, p. 467, under heading, "Necessity of Exhausting Remedies within Organization"; 7 *C. J. S.,* "Associations," Sec. 34b. It is squarely in conflict with *Gallagher* v. *Monaghan,* 58 N. Y. Supp. (2d) 618, decided while this case was pending in the District Court and exactly in point in checking another unlawful expulsion by this very president, Harrison. The decision is buttressed by decisions of the highest court of New York and found that if the president may exercise the power of expulsion, even from membership, it was essential that the procedure should be "analogous to that observed in ordinary judicial proceedings, so far, at least, as to promote substantial justice" and added (p. 619 bot.):

> "I conclude that the order of expulsion made by the Grand President was void and may be attacked in this action without resort to any remedies within the organization. *People ex rel. Deverell* v. *Musical Mutual Protective Union,* 118 N. Y. 101, 23 N. E. 129; *Rodier* v. *Huddell,* 232 App. Div. 531, 250 N. Y. S. 336. The fact that plaintiff did prosecute an appeal to the Grand Executive Council is immaterial. *Wilcox* v. *Supreme Council, Royal Arcanum,* 210 N. Y. 370, 104 N. E. 624, 52 L. R. A., N.S., 806."

The opinion in the *Wilcox* case, *supra,* says:

> "It is shocking to one's sense of fair play that persons defamed should be selected to try the defamatory charge, and it is sufficient for the purposes of this case to hold that they are disqualified by a direct interest in the subject matter of the controversy."

CONCLUSION

For the above reasons, including the far-reaching effect of the decision in the affairs of unincorporated associations, we urge that the petition be granted.

Respectfully submitted,

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